IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/09/2003

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.11778 OF 2003
AND
CRL.M.P.Nos.3985 AND 3986 OF 2003.

1. S.S. Mohamed Zackariya
2. S.S. Karem Gani
3. S.S. Mohamed Abubacker Sadiq
4. S.A. Syed Ibrahim
5. S.S. Ashraf Zunaith ... Petitioners

-Vs-

1. The Sub-Inspector of Police,
Economic Offence Wing No.II,
Madurai.

2. A. Chandramohan
(Second respondent impleaded
vide Order dated
14.7.2003 made in Crl.MP.No.6047
of 2003) ... Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code as stated therein.

For petitioners : Mr.S.V.Jayaraman,
Senior Counsel
for Mr.J.Ferozkhan

For 1st Respondent. : Mr.A.N.Thambidurai for
Government Advocate(Crl.Side)
For R.2 : Mr.M.Ravindran
Senior Counsel for
Mr.K.Thirugnanasanbandam

:O R D E R
The petitioners, who are the accused in the case in C.C.No.515 of 2 002 on the file of the Court of Judicial Magistrate No.VI, Madurai, have filed the above criminal Original Petition praying to call for the records relating to the said case and quash the same.

2. The petitioners would submit that the brother of the fourth petitioner, by name, Mohideen Ariff was carrying on business under the name and style of M/s. Al Aqua Pipes India Limited, Abiramam, Ramanathapuram District; that though the fourth petitioner has been working as Managing Director of the company, the said Mohideen Ariff has been looking after the day-to-day administration of the company; that the other directors are the sons of the fourth petitioner; that the petitioner's company purchased Rexine Powder from a company, M/s. IPCL, Baroda through the complainant company, M/s. R.K. Senthiappa Nadar and Company, Madurai for production of PVC Pipes and supplied PVC Pipes to the complainant company; that though the entire amount was settled to the complainant company, there were some disputes in the accounts.

3. The petitioners would further submit that A. Chandra Mohan, who is impleaded as the second respondent herein and partner of the aforesaid company, M/s.R.K. Senthiappa Nadar and Company, Madurai filed a complaint before the Central Crime Branch Police; that the petitioners have been granted anticipatory bail on bail application Nos.12760 and12860 of 2000; that the XI Judicial Magistrate, Saidapet on going through the investigation report submitted by the Central Crime Brach, Egmore, closed the FIR as the dispute is of civil in nature; that thereafter, the complainant once again filed a complaint before the respondent/police suppressing the earlier compliant lodged on the same matter; that a case has been registered in Cr.No.12 of 2001 under the very same Sections 409, 420 r/w 34 IPC on the file of the respondent police; that the petitioners once again obtained anticipatory bail order dated 21.6.2001; that since the dispute between the petitioners and the complainant is civil in nature, the FIR and charge are not maintainable and that they pray this Court to quash the same.

4. During arguments, the learned senior counsel appearing on behalf of the petitioners, besides emphasizing on the facts as brought forth in the petition, would submit that the law has been clearly and categorically settled and decided by the Honourable Apex Court on the question raised and would cite the judgment of the Honourable Apex Court in T.T.ANTONY vs. STATE OF KERALA AND OTHERS reported in 2001 SCC (Cri) 1048 wherein it is held:

"The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under Cr.P.C. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well-recognised limitations."

"... the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of Cr.P.C. Therefore, the investigation undertaken and the report thereof cannot but be invalid. The same, is therefore, quashed ...."

On such arguments, the learned senior counsel appearing on behalf of the

petitioner would seek to allow the petition quashing the case in C.C.No.515 of 2002.

5. In reply on behalf of the defacto complainant it would be argued that the defacto complainant has lost 34 lakhs in the deal and that he was cheated to the said extent; that based on a direction given by the High Court dated 12.4.2001 an F.I.R has been registered on 17.5.2 001 for an offence punishable under sections 120B and 420 I.P.C.; that on investigation on 13.7.2002, the charge sheet was filed before the Court of Judicial Magistrate No.II, Madurai; that since A4 and A6 are not secured, warrants are to be issued; that the F.I.R dated 3.7.2 000 by Central Crime Branch Police, Chennai do not show any progress in the case registered and hence on 12.4.2001 the High Court ordered direction to E.O.W.II Police, Madurai, to register a case and investigate into and now it is said that on 28.5.2001 on a report filed by the Central Crime Branch before the Court of XI Metropolitan Magistrate, Saidapet, Chennai recorded the F.I.R.; that on this ground now they take the plea that since the Central Crime Branch did not hear anything, the High Court as per its order dated 12.4.2001 directed the E.O.W.II, Madurai to register a case and investigate the matter and thereafter the Magistrate closed the earlier F.I.R. on 28.5.2001; that the charge sheet had also been filed on 13.7.2002 which is under challenge. The learned counsel would lay emphasis that because the Central Crime Branch did not proceed with the case he moved the High Court and obtained the orders which directed the E.O.W.II, Madurai to register the case and investigate into as per which the F.I.R. was filed and charge sheet was also filed.

6. In clarification, the learned senior counsel appearing on behalf of the petitioner citing the additional charge sheet from the typed set of papers would submit that the same was filed based on the first F.I.R. and it could not be said that no action was taken nor investigation done nor conclusions have been arrived at on the basis of the first F.I.R.; that the Inspector of Police filed a final report to the effect that it is purely a civil dispute and referred the charge sheet. The learned senior counsel laying emphasis on the judgment cited supra would end up his arguments with the note that the judgment cited above has become conclusive; that when already a complaint based on which an F.I.R. had been framed he must work out his remedy in that F.I.R. and the second complaint or second F.I.R. is invalid.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both including that of the learned Government Advocate, what could be assessed by this Court is that earlier a case has been registered in Crime No.569 of 2000 based on the complaint lodged by the defacto complainant by the Central Crime Branch Police, Egmore, Chennai for the offence punishable under Sections 409 and 420 r/w Section 34 I.P.C. and final report is also alleged to have been filed before the Court of XI Metropolitan Magistrate, Saidapet referring the case in R.C.S No.198/2001 dated 28.5.2001.

8. In these circumstances, on the part of the petitioners/accused it is argued that no second F.I.R. could be filed as it has been ultimately

decided by the Hon'ble Apex Court in the case cited on their part reported in 2001 SCC (Criminal) 1048 extracted supra. However, on the part of the defacto complainant it would be argued that even prior to filing of the referred charge sheet which was on 28.5.2001, they moved the High Court for a direction to the Central Crime Branch which registered the case having not done anything properly towards processing the case or investigating into the complaint and on 12.4.2001 itself the High Court directed the E.O.W.II, Madurai to register a case and investigate into as a result of which based on the directions of the High Court, this F.I.R. has been framed and it is this case on the ground of the second F.I.R. the accused have come forward to file this petition praying to quash.

9. Neither the order of the High Court has been placed before this Court nor this Court has apprised under what circumstances and on what facts and relying on what position of law the High Court has earlier passed orders directing the E.O.W.II, Madurai to register the case and investigate into as it comes to be claimed on the part of the defacto complainant, this Court is in dark. However, there is no denying of the fact that such an order has been passed by this Court, pursuant to which the present case has been registered by the E.O.W.II, Madurai against the petitioners/accused and in these circumstances since there is a definite direction by the High Court to register the case and investigate into, this Court regardless of the legal propositions feels that it is only desirable on the part of the petitioners to testify the validity of the said High Court direction and while already a specific direction has been issued by the High Court to register the case and investigate into as per which the proceedings have been initiated, it is only proper on the part of the petitioners/accused herein to seek clarification of that order or challenge the same and this Court is of the view that while already there is an order passed by this Court, it is undesirable to pass a second order on one and the same subject and therefore, it is only desirable to direct the petitioners to seek remedy as against the order passed by the High Court dated 12.4.2001 and hence the following order:

10. In view of the circumstances mentioned above, this Court does not want to exercise its inherent powers a second time much less when already there is a direction by the High Court as per order dated 12.4 .2001 and in these circumstances, the only conclusion that could be arrived at by this Court so far as it is concerned with the above Criminal Original Petition is to dismiss the same.
In result, the above Criminal Original Petition is without merit and the same is dismissed.

Consequently, Crl.M.P.Nos.3985 and 3986 of 2003 are also dismissed.

Index:Yes
Internet:Yes

gr.

To

1. The Sub-Inspector of Police,
Economic Offence Wing No.II,
Madurai.

2. The Public Prosecutor, High Court, Madras.